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September 1, 2000

RECEIVED  
SEP 1 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA COURIER**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-204B  
Washington, DC 20554

Re: WT Docket No. 99-217; CC Docket No. 96-98

Dear Ms. Salas:

Edge Connections, Inc. ("Edge"), by its attorneys, hereby submits the following document for inclusion in the record in this proceeding:

1. Memoranda entitled "Explanation of Legal Issues in the License Agreement."

This document, which Edge received from a partner of BroadBand Office ("BBO"), discusses restrictive provisions in the BroadBand Office License Agreement, including a 12-month "Blackout" period during which BBO partners must restrict access to competitive telecommunications providers, and provides guidance to a BBO partner's employees on how to address requests by competitive telecommunications providers for building access. The license provisions and negotiation procedures described in the document are consistent with Edge's experience in the Atlanta market, where several different partners of BBO have told Edge that they could not enter into a building access agreement with Edge due to a "moratorium" imposed by BBO. This demonstrates the urgent need for regulation to promote non-discriminatory building access, and that reliance on market forces alone will be insufficient to ensure non-discriminatory building access, particularly where real estate entities own equity in telecommunications providers.

Ms. Magalie R. Salas  
September 1, 2000  
Page Two

An original and two copies of this notice are provided.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd D. Daubert", with a long horizontal line extending to the right.

Todd D. Daubert  
Counsel to Edge Connections, Inc.

TDD:slr

Enclosures

cc:	Clint Odom	Mark Schneider	Helgi Walker
	Peter Tenhula	Adam Krinsky	Kathy Brown
	Thomas Sugrue (WTB)	Jim Schlichting (WTB)	Jeffrey Steinberg (WTB)
	Joel D. Taubenblatt (WTB)	Lauren Van Wazer (WTB)	Leon Jackler (WTB)
	Eloise Gore (CSB)	Cheryl King (CSB)	Wilbert Nixon (WTB)
	Paul Noone (WTB)	Mark Rubin (WTB)	David Furth (WTB)
	Richard Arsenault (WTB)		

## EXPLANATION OF LEGAL ISSUES IN THE LICENSE AGREEMENT

### Restrictive Provision

The Broadband Office License Agreement is the same as the ARC agreement except that BBO imposes a 12-month "Blackout" period from September 23, 1999-September 22, 2000 restricting access to other telecommunication providers. If you enter into an agreement with Broadband, during this period the following guidelines apply:

1. Wireless companies, such as Winstar, Teligent, MCI, NEXTLINK and AT&T may bring their services into the building, however, we are recommending that Hines properties enter into negotiations only if they are strongly driven by Owners or Tenants.
2. For any telecommunication providers, use the updated Hines Telecommunications License Agreement, currently being drafted, that includes some new provisions gleaned from the ARC and Broadband language. This new agreement will be placed on our database when completed.
3. The Restriction does not apply to (1) any existing telecommunications agreements as of September 23, 1999; or (2) the addition of one other such agreement with a Broadband Office competitor, such as ARC, Cypress, OnSite Access or Urban Media or any other "building centric" provider. In other words, the agreement allows a building to have 2 similar, building centric providers: BBO and one other, in addition to any existing providers during the restriction period.
4. The EXCEPTION is that any telecommunications provider may bring service directly to a tenant-not the entire building-during the blackout. The switch from the provider must, in this case, reside in the tenant's space.

ALL deals must be routed to your Regional Vice President Operations for review and approval BEFORE execution, thus ensuring these guidelines are correctly interpreted.

For your information, the following is the blackout language from the Broadband license agreement, Section 6:

"No Agreement with Direct Competitor. Licensor agrees not to enter into any access agreement with any building centric provider of bundled voice and data telecommunications services to small and medium sized businesses (including Cypress, Onsite Access and Urban Media) with respect to any Tier One Property or Tier Two Property for a period of twelve months after September 23, 1999; provided that this Section 6 does not apply to (i) any existing agreements as of September 23, 1999 and (ii) one other such agreement with such a competitor (including Allied Riser Corporation)."

Existing Rooftop Management Agreements (applicable only if existing)

The License Agreement provides for the dedication of approximately 50 square feet on the building rooftop. Several buildings are currently subject to exclusive Rooftop Management Agreements which require that all leases for rooftop space be obtained through the rooftop manager and that a fee be paid to that manager for its services. Hines has agreed that BBO and/or ARC will not be directly responsible for this fee. While ARC and BBO will contract with the rooftop management company, any fees associated with the lease of the rooftop space will be deducted from the five percent of Gross Receipts that are payable to the building under the Telecommunications License Agreement between the building and ARC/BBO. Any remaining "net" revenue will then be paid by ARC or BBO to the building.

The need for ARC or BBO to obtain rooftop space is usually confined to suburban locations where fiber is not laid for connections and the company must transmit their signal via an antenna or satellite dish. Therefore their need for rooftop space is very limited. In most metropolitan locations rooftop space is not required at this time, however ARC and BBO have the right to request the space at a future time, if additional services are made available only via antenna or dish.

Notice of Non-Renewal/Cancellation

It is recommended that, when appropriate, notice is given to terminate any exclusive agreement or that management negotiates an exclusion for itself to accommodate ARC's and BBO's rooftop space requirement. Critical termination dates in existing agreements should be carefully researched and noted.

Cable Television Exclusive Agreement

If an exclusive agreement exists, it is recommended that the Cable Television Agreement be reviewed for specific restriction language, as BBO and ARC are not considered Cable Television providers and are not licensed as such by the FCC.

It is further recommended that, when appropriate, notice be given to terminate any exclusive agreement.

**CERTIFICATE OF SERVICE**

I, Gledys Y. Lovato, hereby certify that, this 1st day of September 2000, I caused a copy of the foregoing "Ex Parte" to be served via hand delivery to the following:

William E. Kennard, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 8B201  
Washington, D.C. 20554

Susan Ness, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 8B115  
Washington, D.C. 20554

Harold W. Furchtgott-Roth, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 8A302  
Washington, D.C. 20554

Michael K. Powell, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 8A204C  
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Gloria Tristani, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 8C302  
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Kathryn Brown, Chief of Staff  
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Helgi Walker, Sr Legal Advisor & Chief of Staff  
Office of Commissioner Furtchgott-Roth  
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Jim Schlichting, Deputy Chief  
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Leon Jackler  
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Cheryl King  
Cable Services Bureau  
Federal Communications Commission  
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Paul Noone  
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Richard Arsenault  
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Washington, D.C. 20554

And via first-class mail, postage prepaid, to:

Rachelle Chong  
General Counsel and VP Government Affairs  
Greg Zemanick  
Real Estate and Public Policy Counsel  
BroadBand Office  
951 Mariner's Island Boulevard, Suite 700  
San Mateo, CA 94404

  
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Gledys Y. Lovato